

**Charter Township of Elmwood
Zoning Board of Appeals
Regular Meeting
Wednesday October 6, 2021 at 7:00 PM
Location: Township Hall (10090 E. Lincoln Rd., Traverse City, MI)
Approved 11/10/2021**

A. CALL TO ORDER: Jeff Aprill called the meeting to order at 7:00 p.m.

B. Roll Call: Present: Ray Haring, Randy Baidas, Jeff Aprill, James O'Rourke

C. Public Comment: Karyl Moore 12857 S. Roseland Dr., Sue Jones 12684 S. Cedar Ln., Jack Kelly 10100 E. Avondale Ln.

D. Agenda Modifications/Approval: MOTION BY RAY HARING, SECONDED BY RANDY BAIDAS TO APPROVE THE AGENDA AS PRESENTED. MOTION PASSED 4-0.

E. Declaration of Conflict of Interest: Randy Baidas had a conflict with item G1 because he was the applicant.

F. Approval of Minutes: June 2, 2021: MOTION BY RAY HARING, SECONDED BY RANDY BAIDAS TO ACCEPT THE MINUTES OF JUNE 2, 2021 AS PRINTED. MOTION APPROVED 4-0

G. New Business: (Randy Baidas excused to the audience)

1. Case #2021-04 request by Randall Baidas Trust & William Reeves Trust for a side yard variance request at 12381 S West Bay Shore Dr., parcel # 45-004-028-023-00 for a 3-foot side yard variance from the required 10-foot side yard setback to construct a detached garage in the Residential 1 Zoning District.

Jeff Aprill noted the applicant would need all 3 votes for the approval to pass and had the option to postpone until all 5 members were present. The applicant relayed that he would like to move forward.

The applicant proceeded and presented his case, noting it is a tight lot and they would like to add an extra garage and would like to do it in an aesthetically fashion that compliments the existing house and also benefits the neighborhood. They are on M-22. The oddity of their yard is that, as he discovered, the State of Michigan imposes a setback up to 50' (from the right-of-way). Because of that bend on M-22, about 5 of his neighbors, they're subject to that setback. His setback doesn't start until after 30' from the end of the cement and then he has his setback. That's only relevant because the garage they'd like to place can't move east or west. If he moves it toward the lake, he no longer has access to his back yard which is the front of the house. For safety and for practical reasons, that won't work. The desire to move it to the north would allow them to store additional vehicles on the property. The applicant wants the car that belonged to his father to be onsite. Another vehicle was a graduation present, and the last vehicle is a car like the one he learned to drive in. These are not essential, but it does allow them to stay on the property and keep them in house. M-22 has gotten extremely busy, there are many times he can look out his kitchen window and there will be traffic continually for 45 minutes to an hour and that traffic is trying to head into Traverse City. They also have some really nice trees they take care of that if

they don't get the 3' which doesn't seem like a lot, but it's enough to allow them to maneuver the vehicles but also the position of the garage when you pull up, it's a straight shot to the home and he won't have to take out a spruce to park next to the garage and have a turn around. He showed 2 visuals to show the difference; one containing the standard setback and the other with the requested 3' variance. The garage also gets kick back 3' from the corner because they want it perpendicular to the house. They're trying to stay within the confines of the narrowness of the landscaping they're dealing with, (specifically the established trees), the setback they're faced with, and also the side yard setback. There is not a sidewalk, there is not access to the back as the neighbor to the north commented. The neighbors to the north also have a garage that backs up to the applicants side lot line; because of the curve, their garage tilts north so the end of their garage would be 27' feet from the neighbors (if the variance is approved). The neighbors also put in a commercial grade generator and an RV storage shed so this would be a very effective tool to block some of that. They have shortened the overhang of the garage to keep the distance shorter and it's tight.

Jeff Aprill said the visuals help a lot and as usual, he tries to visit the site of cases before the Board. He stated that onsite he noticed the road right of way at that point is 100' and asked Baidas if that was correct. Baidas replied, from the center of the road it's 50' towards him so when he measured from the end of the pavement to the corner it was 33' and that corner was marked from construction that already took place to the north of them. Ray Haring said this wouldn't affect the side setback, to which Baidas said that is correct—if they had the additional, they could have more space towards the road and could drive around it, but they can't move it towards the road.

Staff noted the Board may find the last plan in the packet most useful because it's an overview of the whole site. She received 3 letters from neighbors with no objections. The immediate neighbor to the north submitted a letter saying they were fine with the plan as presented and also the neighbor just one further north. The neighbor directly to the south did not submit anything, but the neighbor next to them did. Jeff Aprill noted the neighbor to the south would not be affected.

Jim O'Rourke noted they went 28' x 20.1' so they could squeeze it in as much as they could.

Baidas said they tried staying conscious of the ordinance and are asking for a smaller intrusion into the 3' and he thinks safety is a big issue. It still gives access to the back for fire and rescue.

Staff wondered how far the eave would be from the foundation line. Baidas responded 1'.

Staff asked if they considered putting the garage on the south side. Baidas responded they have 2 of the final remaining Ash trees in the county they treat along with a birch tree and the trees would have to go if they did that. They also have a sewer line about 35' from the south side of that border.

Jeff Aprill noted this particular case is interesting because he is quite a way off the road. The fact that the neighbor that it affects the most is in favor of this is huge, it would change the value on his property the most. He didn't feel like it was precedence setting, there are legitimate reasons to do what he's doing, and he doesn't see a problem with allowing the 3'.

Jim O'Rourke said keeping from having to back out onto 22 was a good thing and makes it safer.

Ray Haring noted it won't hinder anybody.

No public comment was given.

The Board went through Findings of Fact and Standards for Approval. The Board found that Basic Conditions a-g have been met. The Board found that Special Condition b has been met.

MOTION BY JEFF APRILL, SECOND BY JIM O'ROURKE TO GRANT THE 3' SIDE YARD SETBACK VARIANCE TO PARCEL #45-004-028-023-00 TO CONSTRUCT A DETACHED GARAGE IN A RESIDENTIAL ZONING DISTRICT WITH THE CONDITION THAT TREES SHALL NOT BE IMPACTED BY CONSTRUCTION. ROLL CALL VOTE: RAY HARING-AYE, JIM O'ROURKE-AYE, JEFF APRILL-AYE. MOTION PASSED.

*Written comments from neighbors submitted

Randy Baidas rejoined the meeting at 7:50.

3- minute break

G2. Case #2021-05 Request by Robert and Sue Jones for an appeal of the August 20,2021 Zoning Administrator's decision/determination.

Attorney Graham explained how they go to this particular provision. The Jones' filed an application with the ZBA for interpretation concerning whether short term rentals fell in the definition of a motel. Attorney Graham said that zoning staff and initial consultation with their office determined that the matter was not able to be heard by the ZBA. Two attorneys in their office then had an inner office conference there they discussed the legal issues involved and based on their internal discussion, changed course and then told zoning staff that they should in fact schedule the hearing on the interpretation. The attorneys changed their legal position based on the conference they had internally, and staff did a good job implementing their advice even though it was changed. After staff told the Jones' that the interpretation request was going to be scheduled, staff asked the Jones' whether they still wanted to proceed with their appeal. Attorney Graham pointed out that the purpose of the appeal was to require zoning staff to schedule the hearing on the interpretation request—so staff, based on a change of legal position, scheduled the interpretation request and asked the Jones' whether they wanted to proceed with the appeal hearing. The Jones' indicated they did want to proceed with the appeal hearing so that's why the Board has the appeal case still before them. Attorney Graham restated that the purpose of the appeal has already been achieved because staff has already scheduled a hearing of the Jones' original request and that is next on the agenda. He gave the Board a memo that relates to the legal requirements and the legal doctrine of mootness but because the Jones' wanted to continue with this hearing, they have every legal right to have a hearing in front of the Board on the appeal. Jim O'Rourke asked even though the issue was moot, to which Attorney Graham responded the Jones' have a right to proceed with their hearing.

Ray Haring said his confusion came with ZBA Cases 05 & 06. He asked if they were relatively the same, to which Attorney Graham said generally not. Case 05 deals with the appeal because zoning staff initially said no hearing until Counsel reversed their legal advice while Case 06 deals with the merits of the interpretation.

Staff asked if the Jones' should present first.

Public Hearing opened at 7:57 p.m.

Introduction on the appeal by Sue Jones 12684 S. Cedar Ln. request for an appeal of the August 20, 2021 Zoning Administrator's decision/determination.

She stated they bring this matter before the ZBA as homeowners in Elmwood Township's R1 district because 2 of the homes in a 20 home neighborhood are operating as short term rentals. On August 16, 2021 they filed their ZBA application for an interpretation. On August 20, 2021 the Zoning Administrator with counsel issued a denial of their application, and on September 1, 2021 they exercised their legal right and filed an appeal of her decision. On September 2, 2021 the Zoning Administrator again with counsel from Township Attorney Wendling reversed her decision and asked for their permission to move ahead and schedule a public hearing on their original application. With her reversal of her denial, they understand she was granting them relief they sought to get their interpretation however they notified her on September 8, 2021 they wanted to move ahead and have her process their appeal, their reason was partially based on. Within the 4 days between the date of their original application for an interpretation, which was August 16, 2021 and receipt of her denial which was August 20, 2021 substantive changes were made to the proposed short term rentals Zoning Ordinance amendment including changing the definition of motel that had never been discussed at a public meeting. They believe the changes to the amendment were the direct result of information for their filing for the interpretation and you can see additional detail about that timeline in the attachment on p. 2. With the Zoning Administrator's denial of their application their opportunity for a timely interpretation and public hearing was effectively blocked. At no time did they receive any indication from the Zoning Administrator that she was reviewing her decision for a possible reversal. Therefore, it seems highly likely that the only reason they got the reversal was because they were forced to file an appeal to be heard at all. At this point they chose to go forward with the appeal process in order to have this included in the record and to ensure they didn't lose some real legal right that they weren't aware of by removing their appeal and pretending it didn't happen. They also requested Jack Kelly be allowed to serve as their agent for the purposes of processing this appeal and assisting with any questions they may have.

1:02:03 Jack Kelly said as the applicant pointed out earlier the reason why they're here is because they want to ensure in going forward with their appeal that they did not lose any protections under the law in which they might not otherwise be known to have. As pointed out by Sue Jones they filed an application August 16, 2021. A couple days later a change occurs through a proposed Zoning Ordinance change through Zoning Ordinance definition. 2 days later the applicants are advised that their original application has been denied. In talking about the reasons for the denial, the Zoning Administrator went into substantially lengths in her August 20, 2021 letter regarding why she felt they were not entitled to a hearing before the ZBA. After that period of time as part of that denial (referred to p.2) it says right to appeal within 60 days. A short time thereafter, the applicant decided to go ahead and exercise their right of appeal and they put forth the reasons for their appeal in tremendous detail in a letter dated September 1, 2021. In that part of the letter they took exception to many of the reasons that had been set forth by the Zoning Administrator in her August 21, 2021 letter regarding why they felt they had the right to be heard by the Zoning Board of Appeals. With the agreement of the Township Attorney, pages 1 & 2 of that letter dated August 20, 2021 they repeatedly claimed that the original application of August 16, 2021 did not meet certain provisions of section 12.9 of the Zoning Ordinance specifically, the fact that you're asking the Zoning Board of Appeals to make a determination on a short term rental which is substantially similar to an equivalent use but of the text provisions of this ordinance in response the

Jones' indicated all they were looking for was similar treatment to what the Township Board had been afforded on March 20, 2019 when certain text provisions of the Ordinance, namely the definitions of the ordinance were reviewed. All they were looking for was a similar type of exercise of the ZBA to go ahead and find out whether or not they met that standard and there was another one that says the text interpretation shall be based on thorough reading of this Ordinance for the purpose of the intent of the Ordinance. There were suggestions made that the definition of motel had been included in the Ordinance review, that the ZBA had been tasked with thoroughly reading the Zoning Ordinance when they made their March 20, 2019 determination and that since the matter had been brought before the ZBA and they had made their determination there was no ground essentially under which the applicants weren't entitled to a hearing before the ZBA. They have applications dated September 1, 2021 from the applicants seeking the appeal of the August 20, 2021 application. It goes into tremendous detail and it addresses point by point why they feel the Zoning Administrator had erred in issuing her denial of the eligibility letter and he doesn't know if there's anything to be gained by going into those details in tremendous length. The letter of appeal was filed September 1, 2021, and then the next day September 2, 2021, the Zoning Administrator sent a letter to the Jones' indicating she was in receipt of their appeal and that Attorney Graham had indicated he had taken another look at the situation and they decided maybe they erred the first time around and they should have been given an opportunity to have their original interpretation application processed and therefore that opportunity was now being afforded them by the Zoning Administrator after consultation with counsel. He thinks it's abundantly clear that the applicants did in fact prove that they had a right to come before the ZBA. In every instance it seems to the applicants the only reason why the letter of September 2, 2021 was written was because staff and counsel had the opportunity to review the merits of the case that had been presented by the applicants on appeal. The applicants are not lawyers, none of them on that side of the issue are lawyers. They find it interesting that after everyone had the opportunity to review the merits of their appeal that suddenly there's a reversal that occurs. To them it seems like perhaps counsel and the Zoning Administrator concluded the applicants might actually prevail an appeal because it was so well written and satisfactorily responded to the Zoning Administrator's point by point reasons or because no one expected an appeal to be filed in the first place. September 16, 2021 the original application was filed, September 20, 2021 the denial letter goes forward, they're given 60 days, they go ahead and respond the first of September and then the second of September suddenly there's this decision reached after. So why did they go ahead and decide not to go ahead and take the Zoning Administrator up on her offer on September 2nd? One of the reasons was if you take a look at the August 20, 2021 letter of denial of eligibility consideration letter by the Zoning Administrator like he pointed out earlier on a number of fronts Section 12.9 in the Zoning Ordinance was invoked and it was pointed out the applicant did not meet the requirements of Section 12.9. When you take a look at the letter dated September 2, 2021 from the Zoning Administrator, there's nothing in there that talks about upon further review we are of the opinion that you meet the requirements of Section 12.9 and so therefore the applicants felt like they were going to have to relitigate all the merits of Section 12.9 over and over again if they did not go forward with their appeal. Secondly, they're not lawyers, they're not represented by council. All they as individuals want is to have a fair and reasonable attempt to make their case and conclude in terms of the process of how it goes forward and how it works is what they find in the text of the Zoning Ordinance.

Kelly said that they were not aware of any text in the Zoning Ordinance that allows the Zoning Administrator to make a determination that an application is ineligible for consideration and then once that determination is appealed, the Zoning Administrator gets to take back the original denial determination as if it never happened in the first place. He found nothing in Article 12 that gives that opportunity to the Township. They on the other hand felt it necessary to preserve their rights to have this matter brought to their attention and to fully be processed in an effort to ensure that none of their right were going to be lost simply because they didn't have a better understanding of the law. They took the Zoning Ordinance, the law at its word, they felt it was important and saw they really didn't have an opportunity to change that law either. They didn't want to relitigate Section 12.9 all over again. They didn't see any provision in the law that allowed for the or the Township to change the process as outline in the Zoning Ordinance. Up until that point there were no right afforded to the applicants whatsoever, so it appears that only because of the fact that the September 1, 2021 appeal was made the applicants were given the opportunity to be before them here in the first place regardless of what the September 2, 2021 letter says. So, it's clear in the applicants appeal and in response to the August 28, 2021 denial letter, that the requirements of Section 12.9 have been met by the applicant just as they were met without having said so by the Township Board request to the ZBA. Take a look at whether or not short- term rentals were allowed under the Zoning Ordinance back on March 20, 2019. In closing, they appreciate the fact that Attorney Graham asked staff to go ahead and pass along the 2 memos and the one dealing with tonight is this whole issue of mootness. They got it on Sunday, so they didn't have a lot of time to review it and like he said they're not lawyers. As it relates to the matter of appeal, they wanted to preserve their right to Section 12.9. They didn't want to relitigate. They were concerned about the fact they were only given the opportunity to appeal after or to have their application heard on merits of the original application only after the appeal was filed and they did not see any provisions in the Zoning Ordinance, the law under which they are operating and the Township must be operating that allowed for a decision to be rendered, the appeal to be filed and then suddenly the Zoning Administrator or Council or Township gets the right to say the appeal isn't really necessary and we've changed our mind and now you can go ack to the original application. They felt it important the appeal be heard and that whatever rights they have in this process be preserved and that is essentially why the application was not processed as offered but rather the appeal was pursued. They disagree with Attorney Graham's opinion on the legal doctrine of mootness as it specifically relates to the applicants appeal of the Zoning Administrator's denial of eligibility consideration. They followed the appeal procedure precisely as outlined in the Zoning Ordinance. They believe they successfully addressed each and every point addressed in the Zoning Administrator's August 20, 2021 determination where she said the application was ineligible for consideration. They respectfully request that the ZBA rule in favor of the applicants appeal of the Zoning Administrator's August 20, 2021 determination because it is in compliance and follows the strict letter of the law as outlined in the Elmwood Township Zoning Ordinance. 1:18:50

Ray Haring questioned the March 20, 2019 meeting; he thought they were asked to interpret by the Township Board and he didn't know it was brought to them as a process.

Attorney Graham responded that was an important question but to address it in the interpretation merits of the case not in the appeal issue.

Randy Baidas asked within these 4 days, the changes proposed to the Zoning Ordinance definition of motel were proposed by whom? Was that noticed for Public Hearing? Did the Board meet then?

Jack Kelly responded the application was submitted on the 16th, it asked for an interpretation by the Zoning Board of Appeals as to whether or not short-term rentals as understood by the ZBA and clarified by staff on March 20, 2019 being a situation where a whole house is rented where the owner is not present on the property whether or not that was a substantial similar use to a motel.

Staff clarified, the Township Board did not actually adopt a new definition for motel, that was stricken from the Zoning Ordinance amendment that was adopted.

Jack Kelly stated when this matter went before the Township Board on September 2, 2021 there was a proposal the Board was considering that night for a change to the definition of motel. That was part of what the Board was looking at. It was brought to their attention that definition of motel, it being rather substantially different would have to be a Zoning Ordinance text amendment. Randy Baidas asked, there was no action other than they postponed it or took no action? So, the Board has redefined motel in short term rentals? Jack Kelly said they have put forth a proposal. Attorney Graham stated that his understanding is the Township Board has enacted a Zoning Ordinance Amendment that deals with short term rentals and in the definition of a short- term rental that was enacted by the Township Board, they specifically said a short- term rental shall not be considered a motel.

Sara Kopriva stated that the amendment was adopted. During discussion with the Township Board on September 2, 2021 she acknowledged that Sue and Rod Jones had filed an appeal and in their review of it they need to address that so there was no conflict.

Randy Baidas asked, so there was no public notice. Sara Kopriva responded, there was full notice.

Jack Kelly said, also part of that full notice and opportunity to comment at the September 2, 2021 meeting was a proposed definition for motel, a matter that is going to come before the ZBA in the next hearing, and in that proposed definition change to a motel, is language that it shall not include a short - term rental. So, the Jones' filed an application on the 14th claiming that they believe that STRs are a substantial use to a motel, that Staff went ahead and issued a memorandum to the Township Board after consultation with the Township Attorney proposing that a new definition of motel be considered by the Township Board as part of its ongoing consideration.

Randy Baidas asked if that was done by the Board.

Jack Kelly replied, yes, it was done by the Board.

Randy Baidas asked what meeting that was done at.

Jack Kelly said 2 days later it gets changed and now suddenly the motel definition is being proposed for an amendment at the Planning Commission and now it's going to specifically state that a motel shall not be considered a short-term rental.

Attorney Graham interjected stating they were getting bogged down into the details of the merits of the interpretation. What they need to focus on is the appeal itself and the purpose of the appeal is to require staff to notice the interpretation matter for a public hearing and that was the purpose of the appeal, that was what they wanted, that was a result that was being requested as a result of the appeal.

That has already transpired so they can talk about the details and reasons until they're blue in the face, it does not address the specifics of the reasons for the appeal and those reasons for the appeal, the actual hearing for the interpretation is already scheduled as your next agenda item.

Jack Kelly said the reason for these comments that have been provided by them were because of a question by a member of the ZBA.

1:27:02 Jeff Aprill noted they were still dealing with the appeal and the appeal they'll hear next so he's not sure how that handle the appeal. Attorney Graham responded, you just let people have their comments on the appeal and then you come to a conclusion, but you have to give the applicants and members of the public a right to comment on the appeal hearing itself.

Public Comment: Karyl Moore stated she was sad that trustee did not declare a declaration of conflict in this administrative appeal decision. They may be wondering why this case proceeded after the Townships revised decision on the 2nd. It appears the formalities of the appeals case was already set in motion on the 1st and the Jones' wanted to move forward. Perhaps being a little skeptical and concerned about the sections 12.5 provisions, and she corrected Jack Kelly, not 12.9 but 12.5 the procedures for the appeal which indicates the ZBA is limited to the information available when the decision is initially made. She doesn't find fault with them and she support their decision for this appeal of the original application. Regarding the Township's original 20th letter, p.2 only quotes part of Section 3/3, it left out the text that states every type of potential use cannot be anticipated in the Ordinance, the ZBA shall determine if a similar use is listed in the Ordinance. So, the Township's silent decision not to determine a similar use as listed for the provisions when they received the initial merits of the application further encouraged a formal appeal on this matter not a denial of justice and another \$550 filing fee assessed to the Jones'. Ineligible was mentioned 3 times. #1 Section 9 they may hear upon request an interpretation of a zoning text, they requested it. #2 subsequently again, no text to review. Section 2.1L lives a similar provision for that which she listed. Just prior to the 3rd 3.3 as indicated above Section 11.2F could be reviewed and combat the Township's ineligibility justification. In the meantime, she believes the evidence shows that both parties recognize the substance and the basis in the original request clearly justifies the administrative review and it appears both parties silently recognize Section 2.1L.

Mark Brederland reviewed the packet of information for that evening's meeting and would like to speak in support of this appeal. His reasons are as follows, the appeal was submitted in a timely matter, if no appeal on September 1st by the Jones' then the Zoning Administrator's decision would have stood. The Jones' \$550 application fee was returned as evidenced in the letter. There was actually no relief prior to the appeal. Again, the Jones' did not receive relief from their application until their September 1st official appeal which triggered the Zoning Administrator's sudden reversal on September 2nd to schedule for the ZBA interpretation hearing which happens after this one. In the Jones' September 1st letter to appeal was noted and he quoted lastly they'd be remiss if they didn't note for the record that the applicants and appellants admitted their original request for a ZBA interpretation on August 16th, 2021, then on August 18, 2021, former Township Zoning Administrator Sara Kopriva authored a product memorandum to the Elmwood Township Board stating they were also updating the definition of motel to avoid any potential conflicts of language because a the condition of this new short-term rental use and that you rendered your Zoning Administrator's determination which most likely was significant assistance for the Township Attorney, Peter Wendling , on August 20, 201. During the 2 ½ years that

short-term rentals have been under review by the Elmwood Township Board, the ZBA, and the Planning Commission, August 18, 2021 was the very first time the Elmwood Township Zoning Ordinance definition of motel was mentioned but now it reads being considered for substantial updating which is interesting, as proposed it reads a building in which lodging, or boarding is offered to the public for compensation. Dwellings, apartments, boarding homes, and short-term rentals are not motels under this definition. Coincidence, they think not. This appeal is not moot because no relief was given to the Jones' original application prior to this appeal. The Township Council and Zoning Administrator suddenly reversed the decision upon the September 1st appeal and the information from the original application was used by the Township Legislative body while rejecting the original application for text interpretation.

Public comment closed at 8:35 p.m.

Attorney Graham said regardless of the reasons that have been stated, the facts remain that the appeal was filed originally to have this Board require that zoning staff schedule a public hearing for the interpretation request. The zoning staff voluntarily did that, therefore this Board cannot require zoning staff to do something that has already been done. It's as simple as that. Regardless of the reason and for that fact alone it is his legal advice that this appeal is technically moot and should be dismissed.

MOTION BY RAY HARING, SECONDED BY RANDY BAIDAS, THAT FOR THE REASONS STATED IN THE SEPTEMBER 28, 2021 MEMO FROM TOWNSHIP ATTORNEY BRYAN E. GRAHAM, WHICH ARE HEREBY INCORPORATED BY REFERENCE, THE APPEAL BY ROBERT AND SUSAN JONES CASE #2021-05 IS DISMISSED, SINCE THE APPEAL IS LEGALLY MOOT.

DISCUSSION

**ROLL CALL VOTE: RAY HARING-AYE, RANDY BAIDAS-AYE, JIM O'ROURKE-AYE, JEFF APRILL-AYE.
MOTION PASSED BY A UNANIMOUS VOTE.**

G3. Case #2021-06 Request by Robert and Sue Jones for an interpretation regarding whether a short-term rental is a substantially similar or equivalent use to that of a Motel as defined by the Township's Ordinance.

Attorney Graham noted this was a request for an interpretation of the Zoning Ordinance. What the Jones' have requested is that the Board interpret under 12.9 the text of the definition of a motel and determine whether that definition encompasses a short-term rental which is a non-owner occupied rental of a dwelling for less than 30 days. They have to look at things like the case that was decided by the Zoning Board of Appeals on March 20, 2019 where the Township Board requested that the ZBA decide whether short-term rentals were an allowed use under the Zoning Ordinance. The first place they'll have to look is at the prior minutes and decide whether the decision in 2019 encompassed the definition of a motel and whether that was part of the decision that was made at that time. If they find that decision of motel was encompassed within that decision, that decision was never appealed and would remain in effect. If they do not find that they can look at the text of a definition of the motel and decide how that interpretation is. decision After they gather the Public Comment regarding the merits of the interpretation, he may have further advice at the end of the process.

Rod Jones stated, they are Rod and Sue Jones, 12684 S. Cedar Ln., the applicants on Case #2021-06 for a Zoning Ordinance Interpretation. They bring this matter before the ZBA as homeowners in Elmwood

Township's residential, R-1 zoning district. They live in a platted subdivision of 20 homes where most of the lots are 75-100 feet wide. Two of the homes in their neighborhood have been operated as short-term rentals, in a in a sing family dwelling within 200 feet of their home, the other in a single- family dwelling located next door, 50 feet away-both in violation of the Zoning Ordinance based on the ZBA's determination on March 20, 2019 that non-owner occupied ,short-term rentals are not allowed in Elmwood Township. The driveway and main entrance used by occupants of the dwelling next door is on the north side of the property, less than 50 feet away from their backyard where they spend a great deal of time. So, during the times it is used as a short-term rental, they see a constant stream of transient lodgers, rolling suitcases, cleaning crews, lawn crews, and assorted activities ore commonly associated with a motel, which is a commercial-related use for profit and inconsistent with the residential uses of a single-family dwelling in their neighborhood. The main reason they moved from acreage in Lake Ann after 25 years was to become part of a small community of neighbors, not live next to a transient lodging facility and watch strangers come and go on a daily or weekly basis. So, they appreciate this opportunity for a public hearing on their interpretation as to whether a short- term rental is a substantially similar or equivalent use to that of a Motel as it is defined in the Elmwood Township Zoning Ordinance. They requested that Jack Kelly be allowed to serve as their Agent for the purposes of processing this application for a Zoning Ordinance Interpretation.

Jack Kelly 10100 E. Avondale Ln. said on March 20, 2019 the Township ZBA met at the request of the Township Board of Trustees. Looking around the table, at least 3 members were present at that meeting at that time. As the official minutes of that meeting which is found in Attachment 1 of the August 16, 2021 application submitted by the Jones' indicates the purpose of that special meeting on the 20th of March, 2019 was a request from the Township Board for an interpretation of the Elmwood Township Zoning Ordinance to determine if short-term rentals were allowed. The official Minutes of that March 20, 2021 ZBA meeting on p. 1 state, the Township Board was approached about short-term rentals and decided to forward the topic onto the ZBA to see what the Zoning Ordinance says about short-term rentals. As an Ordinance interpretation the ZBA looked at what the Zoning Ordinance said and not make a determination if they should be allowed or not, it was strictly looking at the words and determining if short-term rentals are allowed. The Minutes go on, Gary Bergstrom the chair at the time noted that it seems there would be a focus especially on the definition portion of the Zoning Ordinance. There are other areas like family dwellings and things like that, but the focus is on the definition on Article 2 of the Zoning Ordinance. Zoning Administrator, Sara Kopriva, said yes, that is where she would start looking because one of the topics the Township Board talked about was owner occupied versus not owner occupied. When you read through the definitions, a few definitions to think about are bed and breakfast and single -family dwellings. Bed and breakfast talks about an owner-occupied structure that rents bedrooms out, so once you determine what the uses are then they can look further in the ordinance and see if that's a use that's listed and which districts they're listed in. At the top of p. 2 of those Minutes ZBA member discussion then took place. Jason Razavi reviewed the definitions and found there is no definition specifically for short-term rentals, the next closest is a bed and breakfast? If not, then it would not be a use that is listed and therefore not allowed. Jeff Aprill agreed with Razavi, a bed and breakfast is an allowed use. Section 3.4 talks about uses not permitted or not specifically permitted. Since we do not have a definition for short-term rental Section 3.4 comes into play. The Zoning Ordinance allows bed and breakfast, allows for a majority of comments that we heard rom tonight. The Ordinance does not allow for someone to buy a house for short-term rental and not live

there. The other board members agreed. A bed and breakfast requires someone to live there. Pages 2-5 of the Minutes then captured the substantial public comment that occurred during the Public Hearing and after each member of the public was given an opportunity to give comment then the public hearing was closed and the action that appears in the middle of p. 5 of those Minutes was then made. MOTION BY JEFF APRILL, SECOND BY JASON RAZAVI, ACCORDING TO THE DEFINITION SECTIONS AS IT READS, WE ALLOW A BED AND BREAKFAST, BUT AS TO SHORT TERM RENTALS IT'S NOT DESIGNATED SPECIFICALLY WITHIN THE ORDINANCE AND SO AS TO SECTION 3.4 STATES THAT THOSE WHICH ARE NOT SPECIFICALLY STATED WITHIN THE ORDINANCE ARE NOT CURRENTLY ALLOWED, THEY ARE NOT CURRENTLY ALLOWED WITHIN ELMWOOD TOWNSHIP WITH A RECOMMENDATION THIS TOPIC BE ADDRESSED BY THE TOWNSHIP BOARD. What's important to note in those very same Minutes on p. 5 attachment 1 of the applicants original Zoning Ordinance interpretation request is that after that motion was made, a clarification occurred for the benefit of the ZBA for posterity so the record could be made absolutely clear and staff at the time Zoning Administrator, Sara Kopriva, clarified the types of uses that were being mentioned in the motion. She said a bed and breakfast was referring to the definition in the Ordinance where the property is owner occupied versus a short-term rental where a whole house is rented and does not have an owner on the property. That was the definition for a short-term rental they were proposed that they would examine that evening, a situation where a whole house is rented with no owner on the property. That clarification occurred for the benefit of the ZBA that evening before the actual vote on that motion took place and then of course all of the ZBA members went ahead and voted yes. It's important to note that at no time during that March 20, 2019 ZBA meeting was any mention made or intention given by staff, members of the public, or members of the ZBA regarding whether a short-term rental could possibly be considered a substantial similar use to a motel at the time the matter simply did not come up for discussion. The Michigan Court of Appeals in their May 21, 2019 decision looked at Susan Reaume's use of her seasonal short-term rental property in the context of the Spring Lake Township's Zoning definition of single family dwelling and motel and determined that any kind of dwelling

2:13:27 Attorney Graham interjected stating he was hearing the same argument 3-4 times.

Jim O'Rourke said they're getting a lot of this rehash and on their agenda, letter M says adjourn at 9:00 p.m. or majority vote to extend meeting.

Attorney Graham asked how many people want to be heard because it seems there has been substantial reiteration of the same points [two members of the public indicated they were interested in speaking]. Attorney Graham also noted that the ZBA's Rules and Regulations notes that the ZBA shall not begin considering any matter on the agenda after 9:00 p.m., they began hearing this around 8:45. He'd rather hear the last 2 comments and get the public comment portion over.

Mark Brederland Elmwood Township R1 resident said he's reviewed the packet of information for the meeting, and he'd like to speak in support of the Elmwood Township Zoning Ordinance text interpretation that short-term rentals fall within the Elmwood Township Zoning Ordinance definition of motel. There's overwhelming evidence that the Elmwood Township definition of a motel would include short-term rental. He fully agrees with the Township Counsel's statement in the packet that the definition of motel under Spring Lake Township Zoning Ordinance is substantially the same as a definition of a motel under the Elmwood Township Zoning Ordinance. The Michigan Supreme Court

2020 affirmed the definition of motel for Spring Lake and that you must rule that a short-term rental falls within the Elmwood Township definition of motel.

Karyl Moore doesn't want to assume the Elmwood Township Zoning Ordinance has been submitted for exhibit so she did that. Subsequent to it she submitted for review some specific areas in the Ordinance to assist with the desired purpose of implementing the intent of the Ordinance concerning transient rentals. Section 1.3 for purpose, Section 1.4 interpretation provisions regarding it should be read as a whole in that provision some of the terms of use to be looked at and additionally she submitted 2007 public notice of when the motel definition was totally reworked, rewrote, and approved by the Township Board, the reaffirmed again in 2017 with the codification of the entire Zoning Ordinance.

2:21:20 Attorney Graham made a statement as to what the role of the Township Attorney is. The role he provided the Zoning Board of Appeals with is the best legal advice he can based on case law, based on the circumstances. He did that in the memo that he provided to the ZBA. What he's about to do is give them advice based on the law that he didn't have time to put in a memo. As the ZBA has heard earlier, the Township Board recently adopted a Zoning Ordinance Amendment dealing with short-term rentals and how they should be considered. If the ZBA believes it is important for them to consider that amendment prior to making their decision in this matter, they have the right to do that. The Township Board is the legislative body in this township and therefore they have the right to amend the Zoning Ordinance as they determine what's in the best interest of the Township. Again, if the ZBA wants to review said Amendment, then they would have the right to adjourn the public hearing to a specific time, date, and place in the future, so the Amendment can be considered. It was his advice to them to do that because to make a complete decision, they need all of the information and all of the information is not presently before them because the text amendment to the Zoning Ordinance has not yet gone into effect. It will go in effect sometime in early November; his understanding is their next meeting is November 3rd and as no hearings have been scheduled for that date, the Board may wish to reschedule their regular meeting to a date after the amendment goes into effect. Attorney Graham advised the ZBA reschedule their regular meeting from November 3rd to November 10th at 7:00 p.m. in the Township Hall to gather further information as it relates to that amendment. If they're interested in doing that, he has a proposed motion prepared to implement that. If they're not prepared to do that, they can proceed with trying to make a decision tonight based on the information that's been presented.

Jeff Aprill asked if they were to adjourn and resubmit this it's more a technicality thing and only the four present members could be part of that meeting on the 10th. Attorney Graham said he understands one of the members is an alternate. Under the Zoning Enabling Act, once the alternate is seated to hear a case, he may not leave the case until it's over. The other regular member can review the record and come up to speed or choose not to participate and let the decision be made by the 4.

Randy Baidas asked at which meeting the Township Board adopted the STR text amendment. Attorney Graham responded that is something they will get to the ZBA in terms of the public hearing.

Randy Baidas asked if they make a motion to adjourn, do they just say the Zoning Ordinance was passed.

Staff answered Baidas' first question by stating that said Zoning Ordinance hasn't been certified by the Township Clerk and it will be advertised in the Leelanau Enterprise tomorrow.

Randy Baidas asked if that is an administrative issue or a legal issue, a proposed amendment that is going to be certified isn't present there.

Attorney Graham shared a motion to adjourn and schedule the amendment.

Randy Baidas asked if the 2 properties that are operating as short-term rentals have a license issued by Elmwood Township. Staff responded, that there is no Licensing Ordinance that is currently in effect within Elmwood Township. It is her understanding that there is a moratorium on enforcement.

Randy Baidas asked if the court opinion referenced in the application was denied a license. Ray Haring said that's what they appealed. Attorney Graham noted the court for Spring Lake Township dealt with a non-conforming use. Randy Baidas asked if they had a licensing process. Staff said, yes. Randy Baidas said the 2 licensing issues are not exact because Elmwood Township doesn't have a licensing process.

Ray Haring said so whether they're enforcing or not enforcing it, they don't know.

Staff said the Township has the authority not to enforce their Zoning Ordinance.

Ray Haring said he recalls discussing motels. He asked Gary about it and he said they're not in R1, so it didn't go any further.

Ray Haring stated if motels are only allowed in Commercial and not R1 he needs to know more.

Attorney Graham asked if the ZBA wants to consider the amendment passed by the Township Board. Right now it's not in affect and so if they do want to consider it, they have to wait for it to become in effect. The motion he proposes is to move their regular meeting rom the 3rd to the 10th. It would be to adjourn the public hearing until November 10th at 7:00 p.m. at the Township hall for the purpose of receiving additional information.

Randy Baidas said this is a complex issue. Particularly because they're being asked to legislate. The more knowledge they have, particularly as they've seen if something becomes moot. They spent a lot of time not really on point so if this amendment will becoming effective and it's relating to this issue, then it seems prudent to wait.

Attorney Graham said ultimately the decision on how to treat short-term rentals is the legislative body is the Board.

MOTION BY RAY HARING, SECONDED BY JIM O'ROURKE TO RESCHEDULE THE NEXT REGULAR MEETING OF THE ZONING BOARD OF APPEALS FROM NOVEMBER 3, 2021 TO NOVEMBER 10, 2021 AT 7:00 PM. AND TO REQUEST THE APPROPRIATE TOWNSHIP OFFICIAL POST BE NOTICED OF THIS CHANGE IN THE BOARDS REGULAR MEETING SCHEDULE WITHIN 3 DAYS OF THIS MEETING AS REQUIRED BY THE OPEN MEETINGS ACT.

ROLL CALL VOTE: RAY HARING-AYE, JIM O'ROURKE-AYE, RANDY BAIDAS-AYE, JEFF APRILL-AYE.

MOTION PASSED UNANIMOUSLY.

MOTION BY RANDY BAIDAS, SECONDED BY RAY HARING, TO ADJOURN THE PUBLIC HEARING IN THIS MATTER TO NOVEMBER 10, 2021 AT 7:00 PM IN THE ELMWOOD CHARTER TOWNSHIP HALL LOCATED AT 10090 E LINCOLN ROAD, TRAVERSE CITY, MICHIGAN FOR THE PURPOSE OF RECEIVING AND

CONSIDERING THE ZONING ORDINANCE AMENDMENT RELATED TO SHORT-TERM RENTALS RECENTLY ENACTED BY THE ELMWOOD CHARTER TOWNSHIP BOARD AND ANY PUBLIC COMMENT RELATED TO THAT ZONING ORDINANCE AMENDMENT.

DISCUSSION

ROLL CALL VOTE: RAY HARING-AYE, RANDY BAIDAS-AYE, JIM O'ROURKE-AYE, JEFF APRILL-AYE.

MOTION APPROVED 4-0.

PUBLIC HEARING ADJOURNED AT 9:40 PM.

G4. Correspondence: Not applicable

G5. Meeting Schedule: Done

H. Old Business: None

I. Comments from the Chair: Jeff Aprill said these are tough cases, he's glad the attorney was present to help guide them and direct them through the process because it's confusing to say the least.

J. Comments from ZBA Members: Randy Baidas commented that he's had a little experience with this matter in a resort community out west.

Ray Haring felt he was rushed to get through this.

Jim O'Rourke is looking forward to the November 10th meeting when they have additional information and noted short-term rentals have been here forever and the Police Power Ordinance if they read it, regulates everything.

Jeff Aprill thanked everyone for their patience and time.

K. Announcements: Staff said the information is posted on the web page and said that she posts applications when the notices run in the paper.

L. Public Comment: Sue Jones, Jack Kelly, Mark Breederland, Rod Jones

M. Adjourn: MOTION BY RAY HARING, SECONDED BY RANDY BAIDAS TO ADJOURN AT 9:49 PM.
MOTION PASSED.